



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

EPA Region 5 Records Ctr.



225202

REPLY TO THE ATTENTION OF

C-14J

Via First Class Mail

February 10, 1999

Julie Emmerich O'Keefe
Pellegrini and Emmerich
Suite 390
Gateway One on the Mall
701 Market Street
St. Louis, MO 63101

Re: Sauget Area 2, Site Q
Time Critical Removal Action

Dear Ms. O'Keefe:

U.S. EPA received your letter dated March 3, 1999 responding to the general notice of potential liability letter your client, Eagle Marine Industries, Inc., received.

In your letter you assert that Eagle Marine qualifies for the affirmative defense of an "innocent landowner" pursuant to Section 107(b)(3) and 101(35)(A) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), and therefore your client is not liable. However, U.S. EPA believes that Eagle Marine is liable as the current owner of the site. To establish an innocent landowner affirmative defense, a defendant must prove that acts or omissions of a third party with whom the defendant has or had no direct or indirect contractual relationship solely caused the release or threat of release. Additionally, the defendant must prove that prior to acquiring the property, he/she made all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice. 42 U.S.C. §9607(b)(3). U.S. EPA believes that Eagle Marine can not substantiate its claim as an innocent landowner.

Eagle Marine also claimed that it has an inability to pay or perform the removal activities outlined in the notice letter. In order to evaluate your client's claim, U.S. EPA will need additional financial information from Eagle Marine. I have enclosed the "Financial Statement for Businesses" form to be voluntarily completed and submitted to U.S. EPA.

- 1

Your letter also stated, "A cursory review of [the Preliminary Ecological Risk Assessment] raises serious doubts as to whether an imminent and substantial threat to public health and the environment exists..." The Preliminary Ecological Risk Assessment is but one of the documents consulted or relied upon that forms the basis of the December 21, 1998, Action Memorandum's determination that an imminent and substantial threat to public health and the environment exists at Site Q. As the Action Memorandum explains in detail an imminent and substantial threat to public health and the environment exists on the southern portion of Site Q where approximately 150-200 drums at the surface and possibly more buried drums are surrounded by soil contaminated with high levels of polychlorinated biphenyls (PCBs) and heavy metals. For your convenience, I have enclosed a copy of an October 15, 1998 memorandum discussing the ecological risk assessment. This document is also contained in the Site's administrative record.

Finally, U.S. EPA does recognize that Eagle Marine has cooperated with the Agency through voluntarily granting U.S. EPA and its contractors access to the Site. Your client's cooperation is appreciated and we look forward to working with Eagle Marine in the future as we continue to address the hazardous substances that exists at the Site.

Given Eagle Marine's decision not to preform the removal action, U.S. EPA will consider its available options to implement the December 21, 1998, Action Memorandum. Should you wish to discuss this matter further, I may be reached at (312) 886-7166.

Sincerely,



Leslie A. Kirby
Assistant Regional Counsel

Enclosures

cc: Michael McAteer, U.S. EPA